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March 28, 2005

VIA HAND DELIVERY

Michael E. Toner, Vice Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: MUR 5645
George Grode**

Dear Mr. Toner:

This letter is in response to your February 25, 2005 Notification with Factual and Legal Analysis which indicated the Federal Election Commission ("Commission") had found reason to believe George Grode ("Grode") consented to corporate expenditures in violation of 2 U.S.C. §441b(a), a provision of the Federal Election Campaign Act of 1971.

Grode, a former Executive Vice President for Corporate Affairs and Government Business at Highmark, Inc. ("Highmark") unwittingly approved expenditures that resulted in prohibited corporate contributions in violation of 2 U.S.C. § 441b(a). However, none of these violations were knowing or willful, and we respectfully submit that the Commission should not take further action against Grode.

Payments to Defray the Costs of Senator Santorum Events

This matter was brought to the attention of the Commission through a voluntary disclosure and detailed submission by Highmark (see Report of Investigation and Voluntary Disclosure by Highmark, Inc. of Certain Payments and Items of Value Provided to Federal Campaign and Political Action Committees, June 14, 2004, hereinafter referred as "Disclosure Report"). The matter was uncovered by Highmark's internal audit process and Corporate Compliance Program, which prompted an independent investigation by Holland & Knight LLP. The independent investigation resulted in the Disclosure Report, in which Highmark *sua sponte* disclosed violations of federal election law.

As documented in the Disclosure Report and the Commission's Factual and Legal Analysis ("Commission's Analysis"), Highmark unknowingly used \$52,303.59 in corporate

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funds to defray the costs of various fundraising events for U.S. Senator Rick Santorum between 1998 and 2003. The corporate expenditures that are the subject of this matter were made in two forms: through check requests for advance payment made by Bruce Hironimus, Highmark's former Vice President, Government Affairs ("Hironimus"); and through expense reimbursement requests, also submitted by Hironimus. As set forth below, Grode's only involvement in these actions involved his approval of certain expense reimbursement forms submitted by Hironimus that included greens fees, golf cart fees, meals, beverages, prizes and handouts in connection with golf fundraisers for U.S. Senator Rick Santorum.

Also as noted in the Disclosure Report and the Commission's Analysis, Hironimus had the authority to approve the check requests himself. Accordingly, no other corporate officer had any role in those expenditures, which total \$35,267.93. With one exception, all of the expense reports submitted by Hironimus were approved by Grode. These expense reports total \$16,665.25 over a roughly five year period. The one exception was an expense report approved by Executive Vice President David O'Brien ("O'Brien") for \$370.41 in wine for a fundraiser held at the home of Stan and Gretchen Rapp in 2003. No Highmark corporate officers aside from Hironimus, Grode and O'Brien are alleged to be involved with violations of 2 U.S.C. §§441b(a).

Of these three Highmark officers, O'Brien is the only officer currently employed by Highmark. Hironimus was fired for his alleged illegal campaign finance activities, and Grode retired from Highmark in 2003 for reasons unrelated to this matter. The expense report approved by O'Brien is addressed in a separate response to the Commission's Analysis for Highmark and O'Brien.

During the time period that Grode approved the above referenced Hironimus expense reports, he was the Highmark Executive Vice President for Corporate Affairs and Government Business. In this position, Grode had overall responsibility for several significant areas of Highmark's business. These included Government and Regulatory Affairs, Corporate Communications, Media and Community Relations, Medicare Part A and Part B Programs, and Strategic Health Initiatives. In addition, he was the Chairman of the Board of four Highmark subsidiaries and on the Board of Directors of four other subsidiaries. Eight senior executives reported directly to him. In addition, in the years immediately prior to his retirement, his duties and responsibilities expanded so that he could be considered for the position of President and CEO of Highmark. (See Exhibits 20 and 21 to the Disclosure Report.).

As Vice President for Government Affairs and Highmark's chief lobbyist, Bruce Hironimus reported to Grode for approximately a seven to eight year period of time. Early in the relationship, Grode estimated that he spent 15 to 20 per cent of his time on government and regulatory affairs, with a larger portion of that time spent on regulatory affairs. As the years passed by, Grode's responsibilities continued to increase, while at the same time, Hironimus became more experienced in his position, and Grode became more confident in Hironimus's ability and judgment regarding government affairs matters. Grode's confidence in Hironimus's knowledge of his job and his ability to effectively represent the company was continually reinforced by his observations of Hironimus's performance and feedback that he received from

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others. Consequently, in his last several years as Hironimus's supervisor, Grode estimated that he spent only a small fraction of his time, perhaps three per cent, overseeing Hironimus's government affairs activities. (See Exhibit 20 to the Disclosure Report.)

During this same period of time in which Grode increasingly carried a heavier burden of duties and responsibilities, and Hironimus's experience and stature continued to increase in the company, Hironimus continually portrayed himself as fully versed in federal campaign finance issues. As such, Highmark and Grode relied on Hironimus to adhere to all federal campaign finance laws and regulations. As discussed on page 15 of the Disclosure Report, when Grode approved the expenses in question, he did so based on assurances by Hironimus that the payment of corporate funds to third-party vendors to defray the costs of campaign fundraising events was both lawful and an acceptable practice, as long as such funds were not paid to a candidate or a candidate's campaign fund. Grode relied on Hironimus's assertions because he believed that Hironimus was both knowledgeable on such matters, and a person of integrity and high ethical standards. Hironimus frequently told Grode that he knew the rules concerning lobbying and campaign finance matters and strictly complied with them. Grode, on the other hand, did not have any formal training in federal election campaign laws and regulations. (See Exhibit 20 to the Disclosure Report.)

Conclusion

We acknowledge that Grode did unknowingly approve expense reports that constituted illegal corporate campaign contributions. He did so primarily because of his reliance on Bruce Hironimus, an experienced senior executive who had been in place for many years, who was perceived by Grode as fully versed in campaign finance laws and a person of integrity, in whom he (Grode) reasonably placed his trust. In addition to his misplaced reliance and trust, a secondary contributing factor resulting in the approval of the expense reports was the extraordinary scope of Grode's duties and responsibilities, which affected his ability to more closely focus on the expense reports that were presented to him.

As the Commission is aware, as soon as Highmark discovered potential wrongdoing on behalf of Hironimus, it retained Holland & Knight to completely investigate the activity and provide a detailed legal and factual analysis. The results of the investigation were then promptly reported, *sua sponte*, to the Commission. Grode has fully cooperated in the investigation and in the submission to the Commission. In addition, in response to these discoveries, Highmark has fired Hironimus, provided campaign finance law training to its government affairs staff, and tightened internal controls over expenditures.

For these reasons, we ask the Commission not to apply a standard of strict liability to Grode. Highmark is willing to accept responsibility for the actions of its one wayward employee (Hironimus), but Grode is a now-retired employee whose contribution to the violation of the law was neither knowing nor willful. Instead, it was inadvertent and based on reasonable reliance on Hironimus. Accordingly, the Commission should not proceed to a formal finding of probable cause regarding Grode, and this proceeding should be dismissed.

27044154347

Michael E. Toner
March 28, 2005
Page 4

Under separate cover, we are requesting conciliation prior to a finding of probable cause pursuant to the rules of the Commission.

Respectfully submitted,

HOLLAND & KNIGHT LLP


Christopher A. Myers

cc: Mark Allen
Office of General Counsel

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